

FILED
MAY 26 2010
U.S. DISTRICT COURT
CLERK'S OFFICE

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

2010 MAY 26 PM 2 11

GREAT FALLS DIVISION

DET. ATT'D. CLERK, CLERK
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UNITED STATES OF AMERICA,) Cause No. CR 08-76-GF-SEH
) CV 10-31-GF-SEH
Plaintiff/Respondent,)
)
vs.) ORDER
)
JOHN PAUL DEWEY,)
)
Defendant/Movant.)

On May 25, 2010, Defendant/Movant John Dewey ("Dewey"), a federal prisoner proceeding pro se, moved to vacate, set aside, or correct his sentence, under 28 U.S.C. § 2255. The motion is supported by a brief in support, various exhibits, and a document titled "Re: 2255 motion Facts to Support Request for Relief 2255."

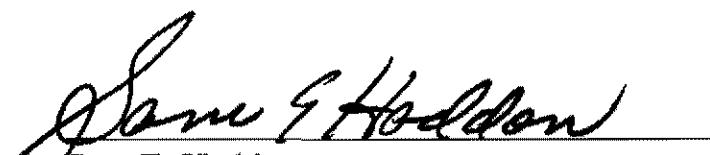
District courts will not consider § 2255 motions while a direct appeal is pending. Feldman v. Henman, 815 F.2d 1318, 1320 (9th Cir. 1987) (as amended); United States v. Deeb, 944 F.2d 545, 548 (9th Cir. 1991); Rule 5, Rules Governing Section 2255 Proceedings for the United States District Courts, advisory committee's note (quoting Womack v. United States, 395 F.2d 630, 631 (D.C. Cir. 1968)). The

time to file a petition for writ of certiorari to the United States Supreme Court has not expired. The motion is premature. A certificate of appealability is not warranted. Lozada v. Deeds, 498 U.S. 430, 432 (1991) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 n.4 (1983)); Slack v. McDaniel, 529 U.S. 473, 484 (2000).

ORDERED:

1. Dewey's motion to vacate, set aside, or correct the sentence (doc. 90) is DISMISSED WITHOUT PREJUDICE.
2. A certificate of appealability is DENIED.
3. The Clerk of Court shall enter a judgment of dismissal in Cause No. CV 10-31-GF-SEH.

DATED this 26th day of May, 2010.



Sam E. Haddon
United States District Court